



[BILLING CODE 6820-14]

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-77

[FMR Case 2020-102-1; Docket No. GSA-FMR-2020-0015; Sequence No. 1]

RIN: 3090-AK30

Federal Management Regulation (FMR); Art In Architecture

AGENCIES: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the Federal Management Regulation (FMR) to update the Art in Architecture program provisions. This final rule provides clarification to the policies that support the efforts to collect, manage, fund, and commission fine art in Federal buildings, and fulfills the requirements in the Executive Order issued July 3, 2020, titled "Building and Rebuilding Monuments to American Heroes."

DATES: Effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202-208-2956 or chris.coneeney@gsa.gov. For information pertaining to status or publication schedules, contact the

Regulatory Secretariat Division at 202-501-4755 or
GSARegSec@gsa.gov. Please cite FMR Case 2020-102-1.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is issuing a final rule to amend part 102-77 pursuant to Executive Order (E.O.) 13934: "Building and Rebuilding Monuments to American Heroes" (available at <https://www.federalregister.gov/documents/2020/07/08/2020-14872/building-and-rebuilding-monuments-to-american-heroes>), issued July 3, 2020, by President Donald Trump. Subsection 4(d) of E.O. 13934 requires GSA, in consultation with the Interagency Task Force for Building and Rebuilding Monuments to American Heroes (Task Force), to revise its Art in Architecture program regulations "to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings."

Subsection 4(c) of the order also directed GSA, to the extent appropriate and consistent with applicable law, to prioritize projects that will result in the installation of a publicly accessible statue of historically significant Americans in communities where a statue depicting a historically significant American was removed or destroyed in 2020.

Furthermore, subsection 4(e) of the order requires that, "When a statue or work of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation."

II. Discussion of Final Rule

This final rule corrects the title of part 102-77 to "Art in Architecture". GSA has not used the hyphens for more than 15 years, including in publications, online and in correspondence. The change reflects this usage.

Section 102-77.21 is added to meet the requirement in subsection 4(d) of E.O. 13934 that GSA revise its Art in Architecture program regulations "to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation

was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings."

Section 102-77.21 also meets the requirement in subsection 4(b) of E.O. 13934 that GSA, to the extent appropriate and consistent with applicable law, shall give priority to the commissioning of statues or monuments involving the commissioning of publicly accessible statues of the Founding Fathers, former Presidents of the United States, leading abolitionists, and individuals involved in the discovery of America.

Section 102-77.21 also incorporates the requirement of subsection 4(c) of E.O. 13934 that GSA "to the extent appropriate and consistent with applicable law, prioritize projects that will result in the installation of a statue" of a historically significant American "in a community where a statue depicting a historically significant American was removed or destroyed" in 2020.

Section 102-77.22 is added to meet the requirement in subsection 4(e) of E.O. 13934 that, "When a statue or work

of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation."

Section 102-77.23 is added to incorporate the E.O. 13934 definition of a historically significant American.

III. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under subsection 6(b) of E. O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property, loans, grants, benefits, or contracts.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 41 CFR Part 102-77

Federal buildings and facilities; Government property management; Rates and fares.

Emily W. Murphy,
Administrator of General Services.

For the reasons set forth in the Preamble, GSA revises
41 CFR part 102-77 to read as follows:

PART 102-77—ART IN ARCHITECTURE

Subpart A—General Provisions

Sec.

102-77.5 What is the scope of this part?

102-77.10 What basic Art in Architecture policy governs
Federal agencies?

Subpart B—Art in Architecture

102-77.15 Who funds the Art in Architecture efforts?

102-77.20 With whom should Federal agencies collaborate
when commissioning and selecting art for Federal buildings?

102-77.21 Is priority given to certain types of works of
art when commissioning and selecting art for Federal
buildings?

102-77.22 Are there certain style requirements for statues
or works of art that are commissioned to portray
historically significant Americans?

102-77.23 Who is considered a historically significant
American under this part?

102-77.25 Do Federal agencies have responsibilities to
provide national visibility for Art in Architecture?

AUTHORITY: 40 U.S.C. 121 and 3306; E.O. 13934.

Subpart A—General Provisions

§102-77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service, operating under, or subject to, the authorities of the Administrator of General Services.

§102-77.10 What basic Art in Architecture policy governs Federal agencies?

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

Subpart B—Art in Architecture

§102-77.15 Who funds the Art in Architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art in Architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings or of completing major repairs and alterations of existing buildings. Funding for qualifying

projects, including new construction, building purchases, other building acquisitions, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

§102-77.20 With whom should Federal agencies collaborate when commissioning and selecting art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Subject to sections 102-77.21 through 102-77.23 of this part, Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual and historic interests and values of a community. In addition, and subject to sections 102-77.21 through 102-77.23, Federal agencies should work collaboratively with the architect of the building and art professionals when commissioning and selecting art for Federal buildings.

§102-77.21 Is priority given to certain types of works of art when commissioning and selecting art for Federal buildings?

(a) When commissioning works of art, priority must be given to those works that portray historically significant Americans or events of American historical significance, or illustrate the ideals upon which our Nation was founded.

Particular priority should be given to public-facing statues of or monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States and the abolition of slavery or others who contributed positively to America's history.

(b) To the extent appropriate and consistent with applicable law, GSA shall prioritize projects that will result in the installation of a statue in a community where a statue depicting a historically significant American was removed or destroyed in 2020. All works of art commissioned under the Art in Architecture program should be designed to be appreciated by the general public and by those who use and interact with Federal buildings.

§102-77.22 Are there certain style requirements for statues or works of art that are commissioned to portray historically significant Americans?

Yes. When a commissioned statue or work of art is meant to depict a historically significant American, the statue or work of art must be a lifelike or realistic representation of that person, not an abstract or modernist representation.

102-77.23 Who is considered a historically significant American under this part?

As used in this part, the term "historically significant American" means an individual who was, or became, an American citizen and was a public figure who made substantive contributions to America's public life or otherwise had a substantive effect on America's history. The phrase also includes public figures such as Christopher Columbus, Junipero Serra, and the Marquis de La Fayette, who lived prior to or during the American Revolution and were not American citizens, but who made substantive historical contributions to the discovery, development, or independence of the future United States.

102-77.25 Do Federal agencies have responsibilities to provide national visibility for Art in Architecture?

Yes. Federal agencies should provide Art in Architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

[FR Doc. 2020-20453 Filed: 9/24/2020 8:45 am; Publication Date: 9/25/2020]